

Dickerson Florida, Inc. and Teamsters Local Union No. 769, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 12-CA-10532, 12-CA-10583, and 12-RC-6350

29 February 1984

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 16 August 1983 Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief. The Union filed a brief in support of the decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions, to certify the representative,² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Dickerson Florida, Inc., Stuart and Ft. Pierce, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters Local Union No. 769, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All truck drivers and truck mechanics, employed by the Employer at its Ft. Pierce, Florida division located at Selvitz Road, State

Road 611-B, Ft. Pierce, Florida; excluding all office clerical employees, dispatcher, plant clerical, guards and supervisors as defined in the Act.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge: This matter was heard in West Palm Beach, Florida, on May 2, 3, and 4, 1983. The issues were finally joined in this matter through a consolidated complaint which issued on March 8, 1983. The charges in Cases 12-CA-10532 and 12-CA-10583 were filed on January 21, and February 22, 1983, respectively. The consolidated complaint alleges that the Respondent engaged in several incidents of independent violations of Section 8(a)(1), and a violation of Section 8(a)(3) by discharging employee Gary Campbell.

By order directing hearing and consolidating cases dated April 15, 1983, the Regional Director for Region 12 of the National Labor Relations Board consolidated the above-mentioned cases with Case 12-RC-6350 in order to resolve issues raised by the employer's objections to an election held in that case on March 25, 1983. The results of that election in unit "B" as shown on the tally of ballots, indicate there were approximately 31 eligible voters, 16 votes were cast for Petitioner, 13 votes were cast against the participating labor organization, 29 valid votes were counted, and there was 1 challenged ballot which was not sufficient in number to affect the results of the election.

Upon the entire record, and from my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Charging Party (the Petitioner in Case 12-RC-65450), and the Respondent, I make the following

FINDINGS OF FACT¹

1. JURISDICTION

A. Gary Campbell

Gary Campbell was discharged by the Respondent on January 10, 1983. The General Counsel alleges that Campbell was discharged because of his union activities. The Respondent contends that Campbell was discharged because he overfilled his dump truck with motor oil. According to the Respondent's position, Campbell, who

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 16 votes for and 13 votes against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

¹ The complaint alleges, the answer admits, and I find that the Respondent is a Florida corporation with offices and places of business in Stuart and Ft. Pierce, Florida, where the Respondent has been engaged in business as a contractor in the building and construction industry, constructing highways, matters related thereto, and shopping center developments, and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The complaint also alleges, the answer admits, and I find that Teamsters Local Union No. 769, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Sec. 2(5) of the Act.

The General Counsel's unopposed motion to correct record herein is hereby granted.

had during the last 2 months of 1982 worked for the Respondent at both Stuart and Ft. Pierce, had before January 10 acted irresponsibly in performing his work. That irresponsibility contributed to the Respondent's decision to terminate Campbell.

Gary Campbell admitted that excess oil, in the amount alleged by the Respondent, would severely damage the dump truck's engine. The Respondent produced expert testimony in regard to the potential damage to an engine. In view of that evidence and Campbell's admission, I shall first examine the Respondent's alleged basis for Campbell's discharge. I have determined to initiate my examination of the discharge allegation with the Respondent's defenses, on determining that the evidence shows that the alleged defense of negligently adding 15 quarts too much motor oil to an engine would justify Campbell's discharge regardless of whether the Respondent was aware of Campbell's protected activities.²

Four witnesses contributed to the evidence regarding the events that precipitated Campbell's discharge on January 10.

Gary Campbell testified that he was assigned truck 708 on January 10 and that, in line with established procedure, he added approximately 2 quarts of oil before starting his assignment. Once he reached approximately 35 miles per hour, Campbell's truck started shaking and vibrating. Campbell returned to the shop and told Ft. Pierce Superintendent Jackson Barker that the "front end of the truck was bad." Barker, who at that time was checking out trucks as they left, told Campbell to park truck 708, and that he would check the problem later.

Campbell parked the truck and waited out of sight of the truck in the shop. Sometime later Barker drove truck 708 out to the shop in front of the grease rack and, with the assistance of employee George Collins, started draining oil. Barker subsequently discharged Campbell telling him there were 15 quarts too much oil in the truck's crankcase.

Barker's version of the events on January 10 was, in many respects, similar to that of Campbell. Barker added that it was some 30 minutes after Campbell returned to the shop before he was able to look at truck 708. Barker made a routine eye check of the truck including tires, then, preparatory to test driving the truck, he, in accord with established practice, began an under-the-hood check. When Barker checked the oil, he observed the oil was some 2 inches above the full mark. Barker immediately drove the truck the short distance from the parking area to the shop where he and George Collins drained 15 quarts of oil from the engine. According to Barker, the oil gauge showed full after the 15 quarts were removed.

George Collins corroborated Barker's testimony. Collins testified that, as he drained the oil, he filled a 5-quart container three times with Barker checking the dipstick each time the container filled. Collins testified that the oil he drained from truck 708 was not hot.

Another employee, Marshall Milner, testified that he saw Gary Campbell taking oil to truck 708 on the morning of January 10. Milner testified that he thought he

saw Campbell take 2 of the 5-quart containers to the truck. Milner approached Campbell, but Campbell told him that he knew what he was doing.³ Milner turned and left.

B. Findings

As shown below, I am unable to credit the entire testimony of Gary Campbell or Jackson Barker. I have analyzed Respondent's defense that Campbell would have been discharged on January 10 in the absence of protected activities, in view of factors which do not rely totally on either Campbell's or Barker's testimony.

There are a number of considerations which lead me to conclude that the Respondent's defense must stand. Those include:

(1) The evidence was substantial that before January 10, 1983, Gary Campbell demonstrated to Respondent's Ft. Pierce supervisory staff that his aptitude for the job was questionable.

Gary Campbell started as a driver of dump trucks, hauling asphalt, when he was first employed by the Respondent at Ft. Pierce on November 29, 1982. On the basis of reports from Truck Foreman Bud Adams and Asphalt Foreman John Johnson that Campbell was unable to properly steer the dump truck as it was unloading asphalt into a paver machine, Superintendent Jackson Barker pulled Campbell off the asphalt job and assigned him to hauling dump rock and sand. Both Adams and Johnson testified that they observed that Campbell was unable to satisfactorily unload asphalt for paving.

Later, shortly before Christmas 1982, Campbell stuck his truck in sand. The testimony is disputed over whether Campbell stuck the truck while loaded. Employee Marshall Milner testified that Campbell admitted to him that he loaded his dump truck after becoming stuck, in the hope of increasing traction to the point of freeing the truck. In any event, the evidence is not in dispute that Campbell broke the rear axle while attempting to free the truck from the sand.

I am convinced that neither of the events mentioned above directly precipitated Campbell's discharge. However, both occurrences would undoubtedly cause concern in the mind of any reasonable employer as to whether it would pay to continue to employ Campbell. Against the background of the above-mentioned occurrences in a period of less than a month and a half since being employed at Ft. Pierce,⁴ it is not surprising that a third serious offense would result in Campbell's immediate dismissal.

(2) Several pieces of evidence convince me that the Respondent's version of the events that led to Campbell's January 10 discharge are essentially correct.

The first of those pieces results from the combined testimony of Campbell and Jackson Barker showing that truck 708 sat idle for 30 minutes to an hour after Camp-

² The Respondent, of course, denies knowing of Campbell's alleged protected activities on or before January 10.

³ Campbell testified at the trial that the blue oil can was a one-gallon container. The evidence showed that the can actually held 5 quarts.

⁴ During the period of Campbell's employment, the employees were given a Christmas break from December 22, 1982, until January 3, 1983.

bell returned to the terminal on the morning of January 10.

Second, after reporting to Barker, Campbell parked the truck (708) in the truck parking area which, according to a General Counsel exhibit, was an area open to view from most locations at the terminal. Campbell testified that, although he could not see truck 708 when seated in the shop, he could see the parked truck by walking a few feet from the shop.

Third, Jackson Barker directed the draining of oil from truck 708 in the presence of several employees including Gary Campbell and George Collins.

Fourth, when he drained the oil from truck 708 at Barker's direction, Collins noticed that the oil was not hot.

If Campbell did not overfill his truck with oil, then either (1) Barker faked the overfill scenario, or (2) someone other than Campbell overfilled the truck. Only Campbell and Barker had access to truck 708 before Campbell's discharge.

In view of the evidence, I find it highly unlikely that Jackson Barker either faked the overfilled scenario or that Barker added the oil himself. As to whether the scenario was faked, Barker would have risked having Campbell, in the presence of other employees, ask to look at the oil stick. If, as Campbell testified, he had checked the oil in truck 708 before leaving on his January 10 assignment, it would have been normal and expected for him to openly dispute Barker's announcement that the truck were overfilled with oil. I find it unlikely that Barker, if the truck was not overfilled, would run the risk of Campbell's questioning him and embarrassing him by looking at the oil stick. Additionally, if the truck were not overfull, the removal of 15 quarts of oil by Collins would have left the truck dangerously low of oil. The evidence indicated the truck was immediately assigned to newly hired employee Goldie Ross. Ross drove the truck throughout the remainder of January 10. If Barker was faking the truck was overfull, he was also running the risk that either (1) Ross would check the oil and discover that far too much oil had been drained,⁵ or (2) that the truck would be severely damaged by being driven during the day without sufficient oil. I find it illogical and unbelievable that Barker faked the truck was overfull.

The second alternative is that Campbell was framed by Barker or someone else acting for the Respondent overfilling truck 708. To do so would require the truck to be overfilled in the parking lot in line of view of several employees including possibly Gary Campbell. Barker would have had to move 15 quarts of oil from the oil rack near the shop where Campbell was waiting to the truck open the hood, and add the oil. I find it highly unlikely that he would do that.

Of course, Barker could have driven the truck elsewhere. However, the General Counsel's diagram of the terminal area does not reveal any area in the terminal where Barker could have been assured that he was out of everyone's view. Moreover, Barker could not have

driven the truck away from the terminal without heating the engine and its oil. The testimony of George Collins shows that the oil was not hot when drained. Therefore, the evidence shows that it is unlikely that the oil was added to truck 708 by the Respondent in order to frame Campbell.

The above factors lead me to conclude that Jackson Barker was reasonable in his belief on January 10 that Gary Campbell had added 15 quarts too much motor oil to the crankcase of truck 708.

Barker reacted immediately to his discovery that truck 708 contained 15 quarts too much oil. He discharged Gary Campbell. In view of my finding that Barker was justified in that belief, plus evidence showing that Campbell had earlier committed offenses which cast doubt on his ability to function as a productive driver, I find that Respondent proved that Gary Campbell would have been discharged on January 10 in the absence of protected activities. I recommend dismissal of the 8(a)(3) allegation.

II. THE 8(A)(1) ALLEGATION

Several independent allegations were made against the following admitted supervisors:

A. Jackson Barker

Gary Campbell, Harry Turer, and James Lathberry all testified to events which they placed during the January 3, 1983, safety meeting, held by Barker at the Ft. Pierce terminal. According to their testimony, Barker instructed the drivers to pick up paper or trash when they had idle time. Campbell spoke up, "union drivers don't pick up trash." Barker replied to the effect that the facility was nonunion and never would be union.

Several witnesses for the Respondent, including Jackson Barker, recalled Barker instructing the drivers to clean up the area, but they placed the meeting on January 10, 1983. The Respondent's witnesses, with one exception, denied hearing any comment about union drivers from Campbell or a reply from Barker. That one exception was employee Marshall Milner. Milner testified favorably to the Respondent in several material areas. However, when asked by the Respondent's attorney, Milner testified that on January 10, the morning of Campbell's discharge, Campbell told Barker "union drivers don't pick up trash." According to Milner, Barker replied, "this is not a union shop and it isn't going to be a union shop."

1. Discussion

I was impressed with the demeanor of Harry Turer, James Lathberry, and Marshall Milner. Lathberry especially impressed me with his apparent candor. His testimony included responses to questions regarding his approaches to the Respondent's officials to mention that he was having second thoughts about the Union. Those comments were obviously difficult and embarrassing for Lathberry. His demeanor and his difficult testimony convince me that Lathberry was a truthful witness.

As shown above, Marshall Milner was called by and testified favorably to the Respondent. Nevertheless, in

⁵ Although Ross testified, he was not asked if he had checked the oil on truck 708 on January 10.

his testimony regarding the safety meeting, he testified in accord with Lathberry, Turer, and Campbell.

As to Respondent's witnesses, it is possible that the employee witnesses failed to hear Campbell's comments. Therefore, it is not necessary to discredit those witnesses. However, Jackson Barker denied that he responded to Campbell to the effect that the Respondent would never be unionized. I do not believe Barker's denial. Barker's testimony in this instance was in direct conflict with another of the Respondent's witness, Marshall Milner. In another area, as shown below, as well as in the instant matter, Barker's testimony directly conflicted with the testimony of James Lathberry whom I have credited. Moreover, I find that Barker appeared to exaggerate regarding the underlying reasons behind Campbell's discharge. Barker testified that one of the underlying factors involved Campbell's tailgating other vehicles. Barker attempted to tie in his tailgating testimony with his comment to Campbell to stay away from Harry Turer with the apparent implication that Campbell was tailgating Harry Turer's truck. However, Barker also testified that a supervisor other than Barker witnessed Campbell's tailgating and that other supervisor allegedly talked to Campbell about the practice. It was apparent that Barker's effort to tie in his comments about staying away from Harry Turer with Campbell's alleged tailgating was a sham designed to justify his comments in light of Harry Turer's reputation as a prime union pusher.

I credit the testimony showing that Barker replied to Campbell during the January 1983 safety meeting to the effect that the Respondent was not, and never would be, union.

2. Conclusion

The General Counsel alleges that Barker's comment to the effect that the Respondent is not, and never will be, a union shop is violative of Section 8(a)(1) of the Act.

The announcement that this facility is not, and will not become, a union shop is troublesome. I recognize that one construction to that comment carries an inherent threat that the Respondent will take any necessary action to prevent unionization. However, another construction could be that, in Barker's opinion, his employees will never select a union. The General Counsel cited a number of cases supporting his position. In the cases, including *Entronic Corp.*, 227 NLRB 1770 (1977), comments about the facility not being union were coupled with illegal interrogation during the same conversation. In *Roma Baking Company*, 263 NLRB 24 (1982), the Employer's comments were included in a context of a threat to close and illegal interrogation. In *Fugazy Continental Corp.*, 265 NLRB 1301 (1982), numerous independent 8(a)(1) violations occurred and Respondent threatened that it would not allow the employees to bring a second union into the shop.

I find that the instant allegation must be distinguished from the above cases. Here Barker's comment was the first credited occurrence involving the Respondent's remarking about a union and, even here, it did not occur as a result of known union organizing activities. I do not find that Barker's comment would have a tendency to threaten or coerce. Moreover, I do not believe that it

stresses the futility of supporting the Union. As noted above, a different interpretation could as easily result from Barker's comment. Therefore, I find that the Respondent did not violate Section 8(a)(1) in this instance.

Gary Campbell testified that some 2 or 3 days after the January 3, 1983, safety meeting Jackson Barker came up to him as he was working at the Ft. Pierce shop. Barker asked Campbell if he were involved in the Union. According to Campbell, he replied, "damn right because it was my right."

Barker denied that he questioned Campbell about a list, and that he knew before Campbell's discharge that Campbell was involved with the Union.

3. Discussion

As shown above, I do not find Jackson Barker to be a credible witness. However, I also had difficulty with the reliability of Gary Campbell. During cross-examination, Campbell was noticeably defensive. Additionally, Campbell was evasive in some areas, including, for example, his testimony regarding a crane falling off the truck he was assigned to drive while working out of the Respondent's Stuart terminal, his being taken off the asphalt job while at Ft. Pierce, and his union activities before his discharge. In other areas, including his testimony that he told no one that he stuck his truck in the sand at Jensen Beach when the truck was empty, Campbell's testimony conflicted with credited testimony from other witnesses. Due to the above difficulties and my observation of his demeanor, I am unable to credit Campbell's uncorroborated testimony. Since Campbell was the sole witness regarding his interrogation by Barker, I shall discredit that testimony. Therefore, since the General Counsel has the burden of proof, I find that this allegation of interrogation fails.

Campbell was also the sole witness to an alleged threat of discharge from Barker during Campbell's termination. That testimony by Campbell was also disputed by the Respondent. In view of my findings regarding Campbell's credibility, I shall also discredit his testimony of the alleged threat. I recommend dismissal of the allegation that Barker threatened to discharge Campbell because of his union activities.

Current employee James Lathberry testified to two conversations involving the Union with Jackson Barker. The first conversation Lathberry recalled occurred after he signed his union authorization card on January 15. On that occasion, Barker came to him in front of the dispatcher's office at the Ft. Pierce terminal and asked him if he had signed a union card. Lathberry indicated that he had and Barker asked, "What for?" Lathberry replied to better himself. Barker then stated, "Well, I don't need people like you. You might as well go collect your unemployment." Lathberry indicated that Truck Foreman Bud Adams and employee Ricky Fisher were present during the conversation with Barker. Fisher testified in corroboration of Lathberry. Adams was called as a witness by the Respondent, but he was not asked and did not testify about this conversation between Lathberry and Barker. Barker was asked about the conversation, and he admitted asking Lathberry if he had signed a

union card. However, Barker denied the remainder of the conversation as related by Lathberry.

Lathberry testified that, approximately 2 days after the above conversation, he was approached by Jackson Barker along with Stuart Truck Foreman Curtis Feagins in the shop yard at Stuart. Lathberry testified that Barker asked him how many people were at the first union meeting. Feagins asked him who was at the union meeting. Lathberry replied that he could not answer the questions. Barker then told Lathberry that someone had come by his house and told him everything, and that he wanted to clarify it with Lathberry. Lathberry again told Barker that he could not answer. Barker told him that the boy who came over to his house, that Barker could swing his weight to save the boys' job and that, if Lathberry would tell him what he wanted to know, he would try to swing his weight and help Lathberry save his job. Barker told Lathberry that he had 20 minutes to think about it and, if Lathberry told him what he wanted to know, he would help him.

4. Discussion

As indicated above, I find that James Lathberry testified credibly. As to the first of the above conversations, his testimony was corroborated by the testimony of Richard Fisher. Additionally, although the Respondent called another witness to that conversation, Truck Foreman Bud Adams, the Respondent did not ask Adams about the conversation between Lathberry and Barker. Bud Adams is the stepfather of James Lathberry. However, in other respects, Adams, who is a supervisor with the Respondent, testified favorably to the Respondent's position. I am convinced, and find, that the version of this conversation related by Lathberry and Richard Fisher is correct, and I credit their testimony.

As to the second conversation, both Jackson Barker and Curtis Feagins denied testimony by Lathberry. According to Barker and Feagins, they did have a conversation with Lathberry at the Stuart shop. However, according to them, Lathberry came to them and asked how he could get his union card back. Barker testified that he told Lathberry that he would check with Ted Tyson. Lathberry admitted telling Barker during a later conversation that he was having second thoughts about the Union, but Lathberry denied ever asking Barker about rescinding his union authorization card. As indicated above, I find Lathberry to be credible. I do not credit the testimony of Jackson Barker or Curtis Feagins. Feagins testified on cross-examination that he had absolutely no interest in finding out what was going on with the union campaign or who was involved in the union campaign. When asked by the General Counsel if he had heard anything from employees about the Union, Feagins replied that he had not, but that he had set up a meeting between a driver or two and President Ted Tyson but that neither driver had mentioned the word union. Then, Feagins testified that it turned out that all those employees wanted was a loan or something. I observed Feagins' demeanor, and I was impressed that he was prevaricating especially in the areas regarding his interest in the employees' union activities.

5. Conclusions

In their first conversation, Barker's interrogation of Lathberry extends well beyond recognized limits. After asking if Lathberry had signed a union card, Barker demanded that Lathberry explain his actions with the comment, "what for." Barker then threatened Lathberry with termination by commenting that he did not need people like him, and that Lathberry may as well collect his unemployment. I find that Barker's comments constitute interrogation and a threat of discharge.

Two days later, Barker, along with Curtis Feagins, again illegally interrogated Lathberry by asking him the number and names of employees that attended a union meeting. Barker and Feagins then threatened Lathberry with discharge by implying that they would not help save Lathberry's job unless he told them what they wanted. Those comments constitute clear violations of the law. Additionally, Barker told Lathberry that another employee had told him everything about the Union. Barker thereby created the impression that he was spying on the employees' union activities in violation of Section 8(a)(1).

Former employee Harry Turer testified that he had a conversation at the Stuart terminal with Jackson Barker and Stuart Foreman Curtis Feagins. Turer testified that he believes the conversation occurred about a week after Gary Campbell's January 10 discharge. Turer testified that Barker came up to him and asked if he had signed a list or petition. Turer replied that he did not know what Barker was talking about. Barker then turned to Feagins and said, "you tell him what will happen." Feagins stated, "If we find out if you or anybody else had signed a list, you will be down the road."

Jackson Barker denied that he ever discussed the Union with Harry Turer. Curtis Feagins denied having the conversation related by Turer. Feagins testified that he did have a conversation with Turer on one occasion when Turer came down to pick up a truck, but, according to Feagins, the conversation consisted entirely of "do you know what truck you come to pick up."

The evidence is undisputed that, during December 1982 before the conversation alleged above, Harry Turer circulated a list among the drivers for better working conditions. Curtis Feagins did admit in his testimony that driver Marty Bartlet mentioned something to him about a list. Barker also learned of the list, and he called Curtis Feagins and asked if Feagins had heard anything about a petition going around. A couple of days after that phone call, Jackson Barker drove to Stuart to meet with President Ted Tyson. At that time, Barker mentioned to Feagins that he had some more information on the list. Subsequently, Barker, in the presence of Feagins, told Tyson that there was a list going around to get the employees organized and that some of the employees had attended a meeting.

Jackson Barker admitted learning from employee Marshall Milner on January 17 that a petition was being signed by the employees.

6. Discussion

As indicated above, I do not credit the testimony of Jackson Barker or Curtis Feagins. Harry Turer demonstrated some confusion as to the time of this conversation with Barker and Feagins. He originally testified that he believed the conversation occurred after Gary Campbell was discharged but before he signed a union authorization card. Turer signed a union authorization card on January 11, the day after Campbell was discharged. Turer vacillated on whether the conversation between Feagins, Barker, and himself occurred before or after he signed a union card. His final recollection was that the conversation occurred about a week after he signed the union authorization card. Despite his difficulty in placing those events, I was impressed with his demeanor. His testimony about this conversation appears reasonable in view of the admissions of Feagins and Barker that they learned of a list being circulated among the drivers around January 17, 1983. With those factors in mind, I have decided to credit Turer's version of that conversation.

7. Conclusion

Again, Barker and Feagins coupled interrogation of an employee about protected activities with an open threat that involvement in protected activities would result in discharge. The interrogation and threat constitute 8(a)(1) violations.

B. Ted Tyson

Following his discharge on January 10, 1983, Gary Campbell drove to Stuart, Florida, and talked to Respondent President Ted Tyson. According to Campbell, during that conversation, Tyson told him that he had heard about the union activity going on at Ft. Pierce, and that he did not like (Campbell's) kind, and that he did not need (Campbell's) kind there.

Ted Tyson denied that he had any knowledge of Campbell's union activities prior to Campbell's discharge on January 10.

Discussion

As indicated above, I am unable to credit the uncorroborated testimony of Gary Campbell. Since the General Counsel has the burden of proof as to this allegation, it is unnecessary for me to consider the credibility of Ted Tyson. I find that the General Counsel failed to prove that Ted Tyson either created an impression of surveillance of his employees' union activities or that he threatened an employee with discharge for engaging in union activities.

III. OBJECTIONS

The March 25, 1983 election at the Ft. Pierce terminal resulted in the following tally:

Approximate number of eligible voters-31
Void ballots-0
Votes cast for Petitioner-16
Votes cast against participating labor organization-13

Valid votes counted-29

Challenged ballots-1

Valid votes counted plus challenged ballots-30

That election was held pursuant to a Stipulation for Certification Upon Consent Election which was approved by the Regional Director for Region 12 on February 28, 1983. On April 1, 1983, the Respondent (the Employer) timely filed objections to conduct affecting the results of the election as follows:

1. The Union, by and through its agents, members, supporters and others under its control and direction, made illegal and unfair promises of benefits to employees conditioned upon the Union prevailing in the election. Such promises and inducements constitutes objectionable conduct which interfered with the election process. *Crestwood of Stockton d/b/a Crestwood Manor*, 234 NLRB 1097 (1978).

2. The Union, by and through its agents, members, supporters and others under its control and direction, remained in the polling area in full view of the voting employees and maintained a list of persons who were voting in the representation election.

3. The Union, by and through its agents, members, supporters and others under its control and direction, remained in the polling area after having voted, and engaged in improper group meeting, coercive electioneering and other improper captive conduct.

4. The Union, by and through its agents, members, supporters and others under its control and direction, made coercive and threatening remarks toward employees during the time in which the election was being conducted that if they did not vote for the Union, they would be subjected to physical violence.

5. The Union, by and through its agents, members, supporters and others under its control and direction, came onto the Employer's property during the course of the election, and stationed himself within close proximity to the polling place and unlawfully observed and surveyed the election, conducted an unlawful group meeting, and conversed with employees prior to and after they had voted.

6. The Union, by and through its agents, members, supporters and others under its control and direction, deliberately misrepresented material issues to employees eligible to vote during the critical 24-hour period prior to the election.

7. The Union, by and through its agents, members, and others under its control and direction, misrepresented wages and benefits that had allegedly been negotiated with other employers.

8. The Union, by and through its agents, members, supporters and others under its control and direction, through improper and unlawful communications to employees, threatened employees with retaliation if they did not vote for the union; such as fear or reprisal in loss of job opportunity and advancement which prevented the holding of a fair

election. *Florida-Texas Freight, Inc., d/b/a Frates, Inc.*, 230 NLRB 952 (1977).

In its brief, the Respondent consolidated its arguments regarding objectionable conduct and alleged that the following constituted grounds on which the election should be set aside:

1. Union election observer Harry Turer gathered employees together at the March 25 election, "in the polling area, not more than thirty (30) feet from the polling entrance itself. Mr. Turer started yelling to everyone all the yes votes come down here."

2. While voters stood in line to vote, union supporters shouted to employees to vote yes. Upon arrival of employee "Pop" Clayton "the group chimed here comes another yes vote," and "we're going to win this thing now."

3. Union Observer Turer continued his electioneering inside while sitting at the observer's table by telling at least one voting employee to vote yes adding "you're a fool if you don't."

4. Two employees were embarrassingly referred to as company pimps and one of those employees, already disabled, was subjected to physical threats. As this employee pressed toward the door to cast his ballot the group jeered company pimp adding "if you think that one leg is bad, we will fix the other one." At the same time these threats were made one union supporter made a kicking motion as if he was going to kick the disabled employee's good leg.

5. "Just as the election was to begin, Union official Manny Blanco arrived at the Dickerson's polling site. Mr. Blanco who was involved in the initial organizing meeting of Dickerson employees, came to Ft. Pierce that day with full knowledge that an election was being held. Mr. Blanco openly engaged in sustained conversation with voting employees, telling them how the Teamsters allegedly helped an injured power plant employee through collections."

I shall first consider whether the evidence supports the Respondent's allegations. The Respondent called four of its current employees who testified in support of their objections. Those employees were Marshall Milner, Thomas Strickland, Kenneth Zallie, and Ronald Wentz.

A. *Gathering Employees Before the Election*

Thomas Strickland and Ronald Wentz testified on behalf of the Respondent. Strickland testified as follows:

Q. Okay, now if you would, tell us what you observed there at the property immediately prior to the time the polls opened.

A. Before the polls opened?

Q. Right.

A. Everybody was gathered around their cars down there in front of the office.

Q. Did anybody call—was anything said about calling people together?

A. They just called everybody and said, "Everybody come over with the yes votes." And everybody was standing around there talking before the election opened. When he come out and said, "The polls are open," everybody went and got in line.

Q. Okay, now who was—who are you talking about that called people together?

A. Everybody.

Q. Did you hear Mr. Harry Turer say anything?

A. Harry was down there before and caught everybody down there.

Q. And you mentioned something about yes votes?

A. Yeah.

Q. What was that again?

A. Everybody just said, "Come on down here where the yes votes are at."

JUDGE ROBERTSON: I'm sorry; everybody said, "Just come down here where the yes votes are at;" is that what you said?

THE WITNESS: Yes, sir.

JUDGE ROBERTSON: Okay.

BY MR. ANDREWS:

Q. Could you just tell us generally what was discussed at this little gathering.

A. Everybody was just talking about voting yes for the union.

Q. The union was discussed?

A. Yeah, voting yes for the union.

Q. About how many people were in this group?

A. About everybody that voted.

Q. Anybody speak up and say that they ought to vote no for the company? Did you hear anybody say that?

A. No, sir, I didn't.

Later, under cross-examination, Strickland testified:

Q. Exactly what did Harry tell you to do?

A. Harry and a bunch of them were standing down there, and we were all—a bunch of us were standing up here. Harry called a bunch of us down here. We all come down here. Harry was there just a few minutes, and then Harry went inside the trailer.

Ronald Wentz, the stepson of Terminal Superintendent Jackson Barker, testified:

THE WITNESS: "Yes," Lathberry. And they started—Harry went down and they started saying, "All the yes votes [sic] come down here." So everybody started moving down there, two other fellows from the opposite direction, left me standing there by myself. So whenever I started coming down the hill, they said, "Hey, not you, we know you're a no vote."

So I said, "Hey, you know, you don't know how I'm going to vote." So I went on down with them.

And they were more or less, I would say, just asking everybody, you know, to vote yes and we can win this election and we'll get more money and better benefits and just your average stuff, I guess.

And the polls got ready to open. Harry went inside.

In defense, the Union called several witnesses. Harry Turer testified that he was the union observer during the March 25 election. Turer testified that he was instructed as to his duties by the Federal agent prior to the election. Turer said that he got all the drivers together and told them that, when they came in, they should come in two at a time, get their ballots, and put their vote in the box, and go back out the door. Turer denied asking the yes voters to gather in one part of the facility. Richard Fisher testified that Harry Turer came out shortly before the vote started and told the drivers to go in two at a time and they would be handed a ballot, and they were to vote and exit by the side door. Fisher testified that Turer did not make any comments about how people ought to vote.

Current employee Charles Sossong testified that the only time he saw Harry Turer before the polls opened was an occasion when Turer came out to tell the people what they were supposed to do, "like go in and vote and leave." Sossong testified that Turer did not say anything about how to vote for the Union. Sossong also testified that he did not see Harry Turer or anyone shortly before the election ask for all the yes votes to come down and gather into a group.

Discussion

Contrary to the Respondent's assertion in his brief, none of the evidence supports the contention that union observer Harry Turer called the "yes votes" together before the election. A close examination of the testimony of the Respondent's witnesses shows that the term "yes votes" was attributed to unidentified persons.

There is evidence which was corroborated by Turer himself, that Turer spoke to the voters before the polls opened. Turer testified that he instructed the voters on how to enter, cast their ballots, and leave, and that he did not comment as to their vote preference. That testimony is in line with the testimony of Fisher and Sossong. A careful analysis of Thomas Strickland's testimony fails to reveal conflicts on that point with Turer, Sossong, and Fisher. Strickland admitted on cross, as shown above, that "Harry [Turer] was [outside] just a few minutes, and then Harry went inside the trailer."

Moreover, the testimony of Fisher and Sossong called into question whether prounion employees were called together and antiunion employees excluded. I am convinced and find that the union observer did not attempt to segregate and gather the prounion employees. Additionally, I credit the testimony that Turer did not solicit yes votes immediately before the polls opened.

I am reluctant to attribute any weight to the testimony of Strickland and Wentz that certain unidentified persons asked the yes votes to gather, that certain unidentified persons solicited yes votes, and that unidentified persons told Wentz not to join the yes votes group. Obviously, testimony of that type cannot be rebutted by others nor thoroughly tested through cross-examination. Moreover, absent some identification by name, or in the absence of names, by physical characteristics, serious questions arise

as to the reliability of the witnesses' testimony. In view of the above factors, the conflicts between their testimony and that of Turer, Sossong, and Fisher, and on the basis of my observation of their demeanor, I shall discredit the testimony of Strickland and Wentz in this regard. Therefore, I find that the evidence does not support the Respondent's factual contention in this regard.

B. *The Arrival of (Pop) Clayton*

Marshall Milner testified that he picked up John (Pop) Clayton and brought him to the polls. The polls were opened at 4:30 p.m. on March 25. Milner testified that he arrived with Clayton around 4:50 p.m.

Ronald Wentz testified that when Marshall pulled in with John Clayton, everybody started hollering, "here comes another yes vote. We are going to win this thing; here comes another yes vote."

Richard Fisher witnessed the arrival of Clayton. Fisher testified that the employees spoke to Clayton, who had been on medical leave.

James Lathberry testified that he spoke to Pop Clayton and Clayton came up. Lathberry testified that a little bit of kidding occurred when Clayton arrived, "like here's another yes vote." Lathberry testified those comments were made because Clayton is a retired member of the Teamsters.

John Clayton did not testify.

Discussion

As indicated above, I find James Lathberry to be a credible witness. In light of his testimony plus the failure of the Respondent to call John Clayton, I am unable to conclude that any of the remarks to Clayton were objectionable. Nothing in the testimony of Lathberry indicates anything more than normal exchanges of greetings and good humor occurred when Clayton arrived. I find that the Respondent failed to prove the occurrence of any objectionable conduct in this instance.

C. *The Union Observer Campaigned During the Election*

Kenneth Zallie, who is currently employed by the Respondent as a truckdriver at its Ft. Pierce location, testified that he voted during the March 25 election. Zallie testified that he entered the polling area with another employee who was on crutches, and, while the Board agent was assisting the employee on crutches, Harry Turer, the Union's observer, told him to "vote yes." Subsequently, Zallie repeated the same testimony. However, later on cross-examination, Zallie testified that when Turer spoke to him he said, "vote yes, you're a fool if you don't."

Harry Turer denied that he said anything to Kenneth Zallie before Zallie voted. Turer specifically denied asking Zallie to vote yes for the Union. Turer testified that he did not know Kenneth Zallie.

Neither the company observer, the Board agent, nor Goldie Reed (the employee on crutches) testified.

Discussion

As indicated above, I have credited the testimony of Harry Turer on other issues. Turer appeared to be testifying truthfully in this instance as well. His testimony that he did not know Kenneth Zallie is supported by Zallie's testimony that he began driving a truck at Ft. Pierce in the month before the election. Zallie's testimony differed somewhat on cross from his testimony on direct, as noted above. Additionally, I am bothered by the fact that the Respondent did not call its own election observer to testify in this regard. No evidence was developed to show that the election observer was unavailable, nor was testimony developed to show that the election observer was not in a position to overhear the alleged comments by Turer.

Turer's comments, if made, would have been in direct conflict with the instruction he had received from the Board agent. It would be surprising for Turer to engage in conduct which he knew was improper, especially in view of the fact that he did not know Kenneth Zallie at the time. Moreover, of course, if Turer made the remarks attributed to him by Zallie, he risked being overheard by the other observer and, perhaps, by the Board agent. Against that background and my general impression of Harry Turer who testified at length on other issues as well as this one, I shall credit Turer's denial and discredit Zallie's testimony in this regard. Therefore, I find that the Respondent has not proven this allegation.

D. *The "Company Pimps" Remarks*

The Respondent contends that two employees were referred to as company pimps. I am unable to find that evidence in the record. The evidence did support that contention as to Goldie Reed (below). The only other record evidence regarding company pimps involved the testimony of Marshall Milner. However, there was no indication that Milner was called a company pimp at any time proximate to the election. His testimony was that he did not recall anyone calling him a pimp on the day of the election. Therefore, I find that no objectionable conduct was proven as to alleged comments involving Marshall Milner.

As to Goldie Reed, on the date of the election, Reed was on disability leave.

Ronald Wentz testified regarding Reed's appearance at the polls:

... Goldie and I guess it's his son came up. Goldie was on crutches. And whenever he come up, they started saying, you know, "Here comes the company pimp."

And he was having a little hard time, you know, getting up the ramp. Everybody was right at the top of the ramp in front of the door. So he had to more or less walk right through the crowd. He was up there and he stopped, you know, in the middle and everybody was, you know some people was calling him a company pimp and some was kidding with him.

I had my back to him. I believe I was talking to either Jimmy Lathberry or John McDaniels. And I

heard someone say, "If you think that one leg's bad, we'll fix the other one." Just as I turned around, someone made like a kicking motion toward his leg, and Tommie Strickland said, "Wait a minute." He said, "You can't make any threats."

And that was about all that happened then. He went inside to vote. Like someone said, he went inside and voted, come back out the front door and left pretty quick. He didn't stick around long at all.

Another witness for Respondent, Thomas Strickland, testified regarding Goldie Reed:

Q. Did you hear anybody make any comments to Goldie when he was going up to vote?

A. Everybody called him a pimp.

Q. Did you hear anything else said to him?

A. They just called him a company man; he was a pimp, didn't have to worry about his vote; he was a no vote.

Q. Did you hear anything said about a broken leg or going to break the other leg or words to that effect?

A. No, sir, I didn't.

Strickland also testified regarding Reed at the polls:

... You said that everybody called him a company pimp. Do you know why they called him a company pimp?

A. No, sir, I don't.

Q. How did Goldie respond to these statements?

A. Goldie said nothing.

Q. He didn't say anything at all?

A. No.

Q. Was he in a good mood at the time he was on the line?

A. Yeah, he seemed to be.

The Union called Richard Fisher, Charles Sossong, and James Lathberry regarding Goldie Reed. None of the three recalled that Goldie Reed was threatened. Again, James Lathberry appeared to testify candidly:

A. Well, I let Goldie in front of me to vote, because he was on crutches.

Q. This is White Goldie?

A. White Goldie, right.

Q. Did you say anything to Goldie?

A. I asked him how his foot was doing and you know, what the doctor had said to him.

Q. Did you hear anybody else say anything to Goldie while you were waiting?

A. Well, there was one remark said to Goldie that, you know, you'd best vote yes, or you think that one foot's bad, you wait to see the other, but it was all in kidding.

Q. Do you know who said that?

A. I believe it was Marshall Milner.

Q. How do you know that?

A. Well, Marshall is the kind of person that that's his attitude. That's just the way he is.

He always jokes around like that.

Q. How did Goldie respond to that comment?

A. A wisecrack back, laughing at Marshall.

Q. He made a joke out of it, in other words?

A. Yes, sir.

Q. How would you describe the tone with which that comment was made?

A. In joke, you know, in fun.

1. Discussion

As shown above, I found James Lathberry to be the most reliable of the witnesses that testified regarding the Golden Reed incident. Therefore, I shall credit Lathberry's account of the incident.

2. Conclusion

The credited evidence shows nothing more than the general lighthearted comments that often occur when workers see each other after an absence. Milner, who admitted that he was considered by some of the employees to be a company pimp, joked with another person that some of the employees thought of as procompany. Both witnesses for the Employer and the Union testified that Golden Reed was in a good mood.

I fail to see how comments which were obviously spontaneous, lighthearted, and made in jest could have affected anyone's vote. The credited evidence clearly demonstrated that none of the remarks to Reed had the tendency to interfere with anyone.

Although Reed was not called to testify, there was no indication that he was unable to appear in these proceedings. He, of course, was best situated to overhear comments directed at him. In the absence of Reed's testimony, I am convinced and find that nothing was said, and no actions were taken against Reed which were objectionable.

E. The Manny Blanco Incident

Several witnesses described the appearance of Manny Blanco near the polling area while the polls were open on March 25, 1983. Blanco testified that he is employed by Ebasco Services on Hutchinson Island where he is steward for Local 769. In late December 1982, Blanco was involved in relaying a petition which was originated by Harry Turer and signed by several of the Respondent's Ft. Pierce employees to Local 769's office. Apparently, the list of names was given by Turer to his neighbor, a Teamsters member. The list was then, eventually, given to Blanco who turned the list over to Local Business Agent Joe Morale at a union meeting on January 4.

Several witnesses testified about a man, who was finally identified as Blanco, driving up near the polls on election day. Marshall Milner testified:

A. Well, I was standing there talking to the gentleman back there, and a green Volkswagen pulled in and said to me, "Did you see the Business agent." And I said, "No, I didn't. I didn't see the man." I says, "He must be inside."

So he looked around, and he said, "I don't recognize, I don't see his car." And I said, "Well, I haven't seen him."

Well, he was there in the beginning, and then by the time I got there with Mr. Clayton, he had left, and the gentleman that he looked for came at the end of the election. And he recognized him.

Q. About what time did this—did he identify himself as associated with the Teamsters in any way?

A. Yeah, he told me that he come there to get some sweatshirts or T-shirts or something from the Business Agent, that the next day there were going to give them out for the use for the kids in Port Saint Lucie.

A. I'd say it was around 5:15, something like that.

Q. And he stayed until after the election was over?

A. Yeah, he—the gentleman that he was looking for came back just toward 5:30, and then he left and pulled across the street and sat across the street.

Ronald Wentz testified:

A. There was a fellow who came up around 5 o'clock who said he was a steward from the power plant and said he was supposed to meet the other Board Agent there to see him about some T-shirts or jackets or something like that. I believe it was T-shirts.

Marshall and I were talking to him, and Robert McDaniels was there and a couple other people scattered around. The Board Agent had asked everybody to go get a coke or scatter for a while until the rest of the people come in to vote.

Q. Excuse me, Mr. Wentz, let me ask you questions now about his car that came in and the steward.

A. Yes.

Q. Was the benefits of being a Teamster discussed while you all were on the property?

A. Well, he brung out the fact that—well, I knew the guy—

Q. While you were over there in that area, did you hear him talk about any benefits of being a Teamster?

A. Well, he was talking to Marshall, and Marshall used to be a Teamster. They were, you know, talking about a few things. He said that at the power plant, whenever Major Joe Rainer (phonetic) over the power plant got in a motorcycle accident, that the Teamsters were the only one that took up a collection for him, and that they took up a collection of about \$1200. That he was out of work and they were the only ones to help him.

I know Joe Ranier because I worked under him at the power plant.

Q. I understand.

But at the time that he (Blanco) was there, had everybody finished voting?

A. No. As a matter of fact, while he was there McDuffy was coming in in the sand truck. And Marshall said, "Here comes McDuffy," said, "He can't vote; he hasn't been here long enough this time." Said, "He's worked here several times."

And he said, "Why can't he vote?"

Q. "He," being who?

A. The agent or steward. I figured he was a steward. Said, "Well, why can't he vote." Said, "Well, he hasn't been here long enough." Said, "He hasn't been here long enough this time. He can't vote."

And he came in and voted. They didn't contest him or anything.

Q. Did the steward say anything in response?

A. Just other than questioning why he couldn't you know. And he did say that if he hasn't been there long enough, then he isn't eligible to vote.

Manny Blanco was called by the Union. Blanco admitted that he pulled up within 100 yards or better of the polling place around 5 p.m. on March 25. Blanco was looking for Business Agent Morale to pick up some T-shirts to use in a Easter Seal charity drive. Blanco testified that he asked some of the men there at the Respondent's terminal the whereabouts of the business agent. He also responded to the question as to whether "they were hiring at Hutchinson Island. Blanco denied discussing economic benefits that [the employees] would enjoy if they voted for a union."

1. Discussion

I credit the testimony that Manny Blanco drove up and stopped in the proximity of the polling area shortly after 5 p.m. on the day of the election. Additionally, I credit Ronald Wentz' testimony that Blanco mentioned that the Teamsters Union was instrumental in taking up a collection of about \$1200 for an employee at the "power plant" that was injured in a motorcycle accident. Also, there was discussion as to whether employee McDuffy had worked for the Respondent long enough to be eligible to vote. Blanco suggested that if McDuffy had not "been there long enough, then he isn't eligible to vote."⁶ Wentz' testimony in this regard was specific and logical under the circumstances. I was impressed with his recollection of specifics as to the conversation and his specific testimony was only generally rebutted.

2. Conclusion

Blanco admitted that he has been steward for Local 769 for 9 years. Although he worked for another employer, Blanco became involved in the organizing activities of the Respondent's terminal in late 1982 when he picked up Harry Turer's petition to better working conditions. Thereafter, Blanco appeared at a union meeting along with some of Respondent's employees to deliver Turer's petition to Business Agent Morale. Blanco also

⁶ Nevertheless, the record reflects that McDuffy voted without challenge.

admitted that part of his job as steward involves organizational activities. Blanco admitted that he was told an election was being held at the Respondent's Ft. Pierce terminal during the time he arrived on March 25.

Under the above circumstances, Blanco was, in the eyes of the Respondent's employees, an agent of Local 769.

The Charging Party argues that Blanco appeared near the polling area after everyone voted. However, the record, through the testimony of Ronald Wentz, reveals that at least one employee, McDuffy, entered the polls after Blanco arrived.

Despite the above, the full record clearly demonstrates that Manny Blanco did not engage in electioneering near the polls. I fully credit Blanco's testimony that the sole reason for his appearance at the Respondent's terminal was to pick up T-shirts for a charity function. Even though Blanco discussed the union fund raising for a disabled employee and related that an employee may not be eligible to vote, the testimony of the Respondent's witnesses, Wentz and Milner, illustrates that their conversation was casual. Moreover, unlike the situation in *Milchem, Inc.*, 170 NLRB 362 (1968), Blanco did not talk with employees waiting to vote. His brief conversation (not prolonged as in *Milchem*) was with two employees that had already voted. There was no evidence which showed that anyone was aware of Blanco's presence in the vicinity prior to their voting.

Moreover, I am convinced that Blanco remained a substantial distance from the polls. Blanco testified that he was 100 yards or more from the polls.

Therefore, this situation falls within the rule of *Boston Insulated Wire Co.*, 259 NLRB 1118 (1982), where the Board held:

Electioneering must be appraised realistically and practically, and should not be judged against theoretically ideal, but nevertheless artificial, standards.

I fail to see how Blanco's presence could have possibly affected the March 25 vote. Therefore, I would deny the Respondent's objection.

In view of my finding that the evidence does not support any of the Respondent's objections, I recommend that the objections be overruled and the election results certified.

CONCLUSIONS OF LAW

1. The Respondent, Dickerson Florida, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union No. 769, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees concerning their union activities and protected concerted activities, by threatening its employees with discharge because they are involved in union activities, by creating an impression of surveillance of its employees' union activities by telling them that employees are reporting those union activities to management and supervision, and by threaten-

ing to send its employees "down the road" because they engaged in protected concerted activities, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The Respondent has not otherwise engaged in unfair labor practices as alleged in the complaint.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER⁷

The Respondent, Dickerson Florida, Inc., Stuart and Ft. Pierce, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act by interrogating its employees regarding their union activities and protected concerted activities, by threatening its employees with discharge because they are involved in union activities, by creating an impression of surveillance of its employees' union activities by telling its employees that other employees are reporting the union activities to management and supervision, and by threatening to send its employees "down the road" because they engaged in protected concerted activities.

(b) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post at its Ft. Pierce, Florida facilities copies of the attached notice marked "Appendix."⁸ Copies of said

notice on forms provided by the Regional Director for Region 12 shall, after being signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material, and

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT interrogate our employees about their activities on behalf of Teamsters Local Union No. 769, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

WE WILL NOT threaten our employees with discharge because they are involved in union activities.

WE WILL NOT create an impression of surveillance of our employees' union activities by telling them that employees are reporting their union activities to management and supervision.

WE WILL NOT threaten to send our employees "down the road" because they engage in protected concerted activities including signing a paper protesting working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees with respect to their exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

DICKERSON FLORIDA, INC.

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁸ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment